

REMARKS

In the foregoing amendments, claims 1-3 were canceled and replaced with new claims 6-8, which correspond thereto. Claims 9-11 were added to the application and further define that the rear frame wall (or rear frame wall member) extends vertically. Editorial and material changes were made to claims 4 and 5. The material changes to claim 4 include further defining that the left-hand and right-hand crawler track frames are respectively arranged outside the left-hand and right-hand frame members of the vehicle body frame, and the rear frame wall member of the vehicle body frame extends to rear end faces of the left-hand and right-hand crawler track frames. Similar limitations were included in new claims 6 and 8. The material changes to claim 4 and the limitations in new claims 6 and 8 further define piping holes arranged in the vehicle body frame, such as the rear frame wall of the vehicle body frame, and that the hydraulic piping passes through these piping holes.

New claims 6-8 further define that the left-hand and right-hand crawler driving hydraulic motors are respectively arranged behind the left-hand and right-hand crawler track frames and are secured to the rear frame wall of the vehicle body frame. Based on the foregoing amendments, claims 4-11 are pending in the application for examination at this time.

The outstanding Office action set forth a rejection of claims 1-5 under 35 U.S.C. §103(a) as being unpatentable over U.S. patent No. 3,797,598 of

Wanner in further view U.S. patent No. 3,529,687 of Pensa. Applicants desire to express thanks to Examiner Restifo for the courtesies extended the undersigned in a personal interview on November 19, 2004. In the personal interview, proposed claims were discussed with the examiner. Proposed claim 6 defined that the rear frame wall of the vehicle body frame extended vertically. The examiner indicated that this limitation appeared to define over the teachings of Wanner. This limitation is included in new claims 9-11, and a formal allowance of these claims is respectfully requested for the reasons discussed in the personal interview. During the personal interview, the examiner suggested defining the rear wall extending vertically from the rear cross member to avoid a possible Pensa 103 rejection. As mentioned above, all of applicant's claims now require that the rear frame wall member of the vehicle body frame extends to rear end faces of the left-hand and right-hand crawler track frames. Since this limitation closely corresponds to the suggestion in the personal interview with the examiner, an allowance of all the claims in the present application is respectfully requested for the reasons discussed in the personal interview.

Applicant respectfully submits that the combined teachings of Wanner and Pensa do not disclose or suggest the invention as set forth in claims 4-11 within the meaning of 35 U.S.C. § 103(a) for at least the following reasons.

The Official action acknowledged that Wanner does not disclose the hydraulic piping as extending through the rear wall. However, the teachings of Pensa were cited as disclosing a crawler-type vehicle comprising a rear wall 3 with apertures (not numbered) for the passing of hydraulic motor components. The Official action concluded that it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the rear cross member of the crawler vehicle of Wanner with the rear wall and apertures of Pensa in order to pass the piping through the rear wall while still protecting the pump inside of the frame.

There is no teaching in either Wanner or Pensa that remotely contemplates or suggests the modification to Wanner as proffered in the outstanding Office action. Applicant respectfully submits that this statement in the Official action incorporates the impermissible use of hindsight reasoning to modify and combine the references in a manner required to meet the limitations of the claims. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Namely, why would one having ordinary skill in the art at the time of the invention provide the rear cross member of the crawler vehicle of Wanner with the rear wall and apertures of Pensa in order to pass the piping through the rear wall while still protecting the pump inside of the frame? Item 15 in Wanner, which the Official action labeled as a rear cross member, is identified as a bottom plate in Wanner. There is no reason why one of ordinary skill in

the art would provide apertures or the presently claimed piping holes in the bottom plate 15 of Wanner because the conduits 22 therein do not pass through the bottom plate 15. Furthermore, one of ordinary skill in the art would not provide apertures or the presently claimed the piping holes in the bottom plate 15 of Wanner and pass the conduits 22 through the holes, because the conduits 22 would then be exposed below the bottom plate 15 and thereby be exposed to severe damage on impact with rocks, stumps, and the like and by mud which tends to pack therearound during operation of the vehicle, which severe damage the teachings of Wanner desire to avoid.

In addition, there can be no reason to somehow extend the bottom plate 15 of Wanner vertically because such an arrangement provides no advantage to the vehicle of Warner that would be realized by one of ordinary skill in the art from the teachings of Wanner or Pensa. In addition, one of ordinary skill in the art would not extend the bottom plate 15 of Wanner vertically, because such a vertically extending wall would interfere with the conduits 22 therein.

The teachings of Pensa do not cure or rectify the deficiencies in the teachings of Wanner and cannot suggest the arrangement of applicant's claims to one of ordinary skill in the art. The Official action proffered that Pensa discloses a crawler-type vehicle comprising a rear wall 3 with apertures (not numbered) for the passing of hydraulic motor components. However, if cross member 3 of Pensa is considered to correspond to the presently claimed rear

frame wall, which is part of the presently claimed vehicle body frame, it is respectfully noted that the vehicle hydraulic motor(s) 16 of Pensa are arranged within the vehicle body frame and not arranged outside the vehicle body frame as set forth in claims 4-11. Therefore, it is it possible for these teachings to contemplate or suggest a *piping structure extending from the hydraulic pump arranged within the interior of the vehicle body frame, the piping structure passing through piping holes in the vehicle body frame to the exterior of the vehicle body frame*, and the piping structure connecting to the left-hand and right-hand crawler driving hydraulic motors arranged *on the exterior of the vehicle body frame*, as presently claimed.

In addition, since the teachings of neither Wanner nor Pensa identify the location of the hydraulic pump, these teachings cannot suggest that the *hydraulic pump is located within the vehicle body frame*, as set forth in claims 4-11. Therefore, these teachings cannot suggest any arrangement of hydraulic piping relative to the interior (or from within) the vehicle body frame, as presently claimed. Further, the apertures in cross member 3 of Pensa is not for passing hydraulic piping or conduits, as presently claimed. In fact, Pensa does not disclose any hydraulic piping or conduits. Therefore, applicant respectfully submits that the arrangement of the cross member 3 of Pensa is not pertinent to the presently claimed invention.

All applicant's claims require that the rear frame wall member of the vehicle body frame extends to rear end faces of the left-hand and right-hand crawler track frames. This structure in applicant's claims is similar to that suggested in the personal interview with the examiner. The teachings of Wanner and Pensa do not remotely contemplate or suggest this structure of applicant's claimed invention. Figure 2 of Wanner shows the bottom plate 15 intersecting the track roller frame 19 at a distance from the end thereof. The bottom plate 15 of Wanner does not extend to rear end faces of the track roller frame 19, and therefore, these teachings cannot contemplate or suggest that the rear frame wall member of the vehicle body frame extends to rear end faces of the left-hand and right-hand crawler track frames, as presently claimed.

Figure 1 of Pensa shows cross member 3 intersecting the track frame 1 at a distance from the end thereof. The cross member 3 of Pensa does not extend to rear end faces of the track frame 1, and therefore, these teachings cannot contemplate or suggest that the rear frame wall member of the vehicle body frame extends to rear end faces of the left-hand and right-hand crawler track frames, as presently claimed.

In addition, applicant's claims 5-7 require that the left-hand and right-hand driving crawler hydraulic motors are respectively attached to the rear frame wall member of the vehicle body frame. The teachings of Wanner and Pensa do not remotely contemplate or suggest this arrangement.

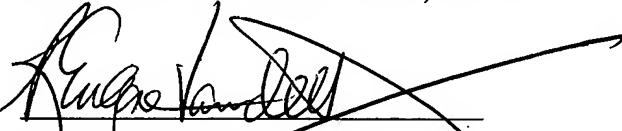
For the above reasons, applicant respectfully submits that claims 4-11 are patently distinguishable from the teachings of Wanner and Pensa within the meaning of 35 U.S.C. § 103. Therefore, applicant respectfully requests that the examiner reconsider and withdraw this rejection.

In view of the foregoing amendments and remarks, favorable consideration and a formal allowance of claims 4-11 are respectfully requested.

While it is believed that the present response places the application in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolved any outstanding issues.

In the event this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The fee therefor, as well as any other fees which may become due, may be charged to our deposit account No. 22-0256.

Respectfully submitted,
VARNDELL & VARNDELL, PLLC



R. Eugene Varndell, Jr.
Attorney for Applicant
Registration No. 29,728

Atty. Case No. VX002404
106-A S. Columbus Street
Alexandria, Virginia 22314
(703) 683-9730
V:\Vdocs\W_Docs\Nov04\PO-152-2404 RS.doc